

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Regulation of Business Data Services)	WC Docket No. 17-144
For Rate-of-Return Local Exchange Carriers)	

**PETITION FOR WAIVER
BY
CASS TELEPHONE COMPANY
OF THE MAY 1, 2019 BDS ELECTION NOTICE
TO THE WIRELINE COMPETITION BUREAU**

Cass Telephone Company (“Cass”) hereby requests a waiver for the May 1, 2019 date for rate-of-return local exchange carriers authorized to receive ACAM support to notify to the Wireline Competition Bureau (“WCB”) that Cass has taken the BDS Election to migrate their Business Data Service (“BDS”) offerings to a reduced regulatory framework for the BDS market it serves. The Federal Communications Commission (“FCC”) adopted the May 1, 2019 date for rate-of-return local exchange carriers to notify the WCB that they have taken the BDS Election in an Order (*Report and Order, Second Further Notice of Rulemaking, and Further Notice of Proposed Rulemaking*), WC Docket No. 17-144, released on October 24, 2018. The notice date to the WCB is applicable to rate-of-return local exchange carriers (“RLECs”) receiving fixed universal service support including carriers receiving Alternative-Connect America Cost Model support (“A-CAM”). The notice date to the WCB was set as part of implementation of Section 61.50 of the Commission’s rules as adopted by the BDS Election Order.

As discussed below, good cause exists to waive the May 1, 2019 date for notice to the WCB established pursuant to Section 61.50 to allow Cass to elect incentive regulation for its BDS effective July 1, 2019 to become effective concurrent with the annual access tariff filing in 2019.

Cass is a rate-of-return rural incumbent local exchange carrier (“RLEC”) in the State of Illinois. Cass elected to take the FCC’s A-CAM offer along with its obligations and currently receives universal service payments pursuant to A-CAM pursuant to § 54.311. Cass notified the National Exchange Carriers Association (“NECA”) by March 1, 2019 that it would take the BDS Election, would exit the NECA Tariff F.C.C. No. 5 for BDS, and will offer BDS via the soon to be filed NECA Tariff F.C. C. No. 6. Further, Cass completed and filed its cost study in April 2019 so that NECA could calculate its rates and do what was required for Cass to be included within NECA Tariff No. 6 with an effective date of July 1, 2019. In furtherance of the BDS Election, Cass mailed a BDS Election Notice to the WCB on April 19, 2019. (See attached copy of the BDS Election Notice). However, Cass later discovered that, due to an inadvertent addressing error, it had sent to the BDS Election Notice to the WCB with an old FCC address that is no longer in use. As a result of the inadvertent error in the address the BDS Election Notice did arrive at the former mail destination for the FCC in Capital Heights, Maryland on April 22, 2019, but since the location was “vacant,” the letter was the forwarded on in the United Postal Service System. (See attached USPS Tracking Receipt).

Cass was not aware that the WCB had not received its BDS Election Notice until NECA contacted Cass to inform the carrier that NECA could not confirm that the WCB had received the BDS Election Notice on or about May 16, 2019. Cass and NECA have since confirmed that the WCB has not received the BDS Election Notice that Cass mailed on April 19, 2019. NECA has informed Cass that it is ready to finalize Cass’s NECA Tariff No. 6 BDS filing with an effective date of July 1, 2019, but to do so Cass would need the FCC to grant a petition for waiver of the May 1, 2019 notice date to the WCB. Cass immediately took steps to file the instant petition.

Cass requests that the Commission grant a waiver for the May 1, 2019 notice date to the WCB that was set as part of implementation of Section 61.50 of the Commission's rules. A waiver of the May 1, 2019 notice date would allow NECA to finalize Cass's BDS Election and move to incentive regulation for BDS by allowing NECA to proceed with the calculation of its rates and its inclusion in the upcoming NECA Tariff No. 6 filing that would be effective July 1, 2019.

Section 1.3 of the Commission's rules allows the Commission to waive its rules on its own motion or for good cause shown. Generally, the Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F. 2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). Moreover, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F. 2d 1153, 1159 (D.C. Cir. 1969) (*WAIT Radio*), cert. denied, 409 U. S. 1027 (1972); *Northeast Cellular*, 897 F.2d at 1166.

Good cause exists for Cass's requested waiver of the May 1, 2019 notice date to the WCB for rate-of-return local exchange carriers authorized to receive A-CAM support to notify the WCB that the carrier has taken the BDS Election to migrate their BDS offerings to a reduced regulatory framework for the BDS market it serves effective July 1, 2019. Cass did provide NECA with notice of its BDS Election by March 1, 2019 and filed its cost study in April 2019 so that NECA could proceed with the necessary calculations to include Cass in the upcoming NECA Tariff F.C.C. No. 6 with an effective date of July 1, 2019. Cass clearly intended to provide the WCB with timely notice of its BDS Election as it mailed the notice to the FCC on April 19, 2019, well in advance of the notice date. However, the BDS Election notice inadvertently had a former address for the FCC and the WCB did not receive the notice by May 1, 2019.

First, Cass maintains that strict compliance to the May 1, 2019 deadline for the BDS Election Notice to the WCB would be overly burdensome for Cass. The company has taken all the necessary steps to finalize the BDS Election with NECA, and NECA is prepared to finalize its efforts to include Cass in the upcoming NECA Tariff F.C.C. No. 6, with the lone exception being that Cass inadvertently sent the BDS Election Notice to the WCB to a former address for the FCC. Therefore, without the FCC's grant of a waiver, the effort and costs put into making the BDS Election and move to reduced regulation for BDS this year would unnecessarily need to be done again next year.

Second, Cass's request for a waiver of the reporting deadline of May 1, 2019 for the notice to the WCB is not an overly broad request but a narrow request for a waiver to allow the company to finalize its BDS Election and move to reduced regulation for BDS. Cass seeks a waiver of the May 1, 2019 notice to the WCB so that NECA can finalize its move to reduced regulation for BDS effective July 1, 2019.

Third, Cass has timely initiated this Petition for Waiver of the May 1, 2019 deadline since it only discovered that it inadvertently sent the BDS Election Notice to the WCB addressed to a former FCC address and that the WCB did not receive the notice by the May 1, 2019 date. Upon realizing its addressing error, Cass had discussions with NECA about its BDS Election and inclusion in the upcoming NECA Tariff F.C.C. No. 6, and NECA informed Cass it was able to finalize the BDS tariffing process but that Cass needed a waiver of the May 1, 2019 notice date. Cass immediately began to prepare this Petition for Waiver and filed it with the FCC.


Fourth, the Commission should grant Cass's Petition for Waiver of the May 1, 2019 notice date to the WCB of its BDS Election and move to reduced regulation for BDS as a matter of equity. Cass provided notice to NECA of its BDS Election by March 1, 2019, accelerated the preparation

and its filing of its cost study so that NECA could do the required calculations so that Cass could be included in the upcoming NECA Tariff F.C.C. No. 6. Further, NECA is prepared to finalize the tariffing process if the FCC grants this petition in time for Cass to be included in the tariff filing with an effective date of July 1, 2019. Cass maintains that it would be unequitable for the Commission to not grant the waiver of the May 1, 2019 BDS Election Notice since Cass has taken all the necessary steps to finalize the BDS Election with NECA and clearly intended to timely file the notice with the WCB but for the inadvertent addressing error.

Lastly, Cass believes that it is in the public interest for rate-of-return local exchange carriers on fixed universal support to be allowed to offer BDS with reduced regulations, and that waving the May 1, 2019 BDS Election notice date to the WCB in this particular case and circumstances, is in the public interest.

WHEREFORE, Cass respectfully requests that the Commission waive the May 1, 2019 deadline for the BDS Election notice to the WCB established pursuant to Section 61.50. The waiver would allow Cass to finalize its BDS Election and its move to incentive regulation for BDS, with its inclusion in the upcoming NECA Tariff No. 6 filing that would be effective July 1, 2019.

Respectfully submitted,

By: 

Dated: May 21, 2019

Thomas D. Allen
Vice President
Chief Operating Officer



Telephone Company

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217-452-3022 www.casscomm.com 800-508-5405

April 19, 2019

Kris Monteith
Wireline Competition Bureau
Federal Communications Commission
9300 East Hampton Drive
Capitol Heights, MD 20743

Re: Election of Incentive Regulation for Business Data Services
Cass Telephone Company, Study Area Code 340984

Dear Mr. Monteith,

Cass Telephone Company ("Company") hereby provides notice to the Wireline Competition Bureau ("Bureau") of its election to convert to incentive regulation for Business Data Services ("BDS") effective July 1, 2019, in Study Area Code 340984, in the State of Illinois.

The Federal Communication Commission's ("FCC") Business Data Services for Rate of Return Local Exchange Carriers Report and Order provides that "carriers electing to convert to incentive regulation effective July 1, 2019" are required to "provide the Bureau with notice of their election by May 1, 2019." Cass Telephone Company is a rate-of return authorized Alternative Connect America Model (ACAM) carrier eligible to make this election, and Cass Telephone Company elects incentive regulation for BDS services effective July 1, 2019. Cass Telephone Company currently offers BDS pursuant to the National Exchange Carrier Association, Inc. ("NECA") Tariff F.C.C. No. 5. Effective July 1, 2019, Cass Telephone Company will exit NECA Tariff F.C.C. No. 5 for BDS and will offer those services pursuant to a new tariff that NECA has indicated will be named NECA Tariff F.C.C. No. 6. NECA will file BDS rates under the incentive regulation framework for Cass Telephone Company in the NECA July 1, 2019 annual access tariff filing.

If you have any questions regarding Cass Telephone Company's election of incentive regulation for BDS, please contact me. You can reach me by telephone at (217) 452-7800 or by email at tom.allen@casscabletv.com.

Sincerely,

Thomas D. Allen
Vice President
Chief Operating Officer

Track Another Package +

Tracking Number: 70163010000064281412

Remove X

Your package is moving within the USPS network and is on track to be delivered to its final destination. It is currently in transit to the next facility.

In-Transit

May 12, 2019

In Transit to Next Facility

Feedback

Text & Email Updates



Select what types of updates you'd like to receive and how. Send me a notification for:

Text

Email

☐☐

All Below Updates

☐☐

Expected Delivery Updates ⓘ

☐☐

Day of Delivery Updates ⓘ

☐☐

Package Delivered ⓘ

☐☐

Available for Pickup ⓘ

☐☐

Delivery Exception Updates ⓘ



Package In-Transit Updates ⓘ

Tracking History



May 12, 2019

In Transit to Next Facility

Your package is moving within the USPS network and is on track to be delivered to its final destination. It is currently in transit to the next facility.

May 8, 2019, 9:36 pm

Departed USPS Regional Facility

SOUTHERN MD DISTRIBUTION CENTER

April 22, 2019, 1:44 pm

Vacant

CAPITOL HEIGHTS, MD 20743

April 22, 2019, 9:09 am

Out for Delivery

CAPITOL HEIGHTS, MD 20743

April 22, 2019, 8:59 am

Sorting Complete

CAPITOL HEIGHTS, MD 20743

April 22, 2019, 8:47 am

Arrived at Unit

CAPITOL HEIGHTS, MD 20743

April 21, 2019, 11:53 am

Arrived at USPS Regional Facility

SOUTHERN MD DISTRIBUTION CENTER

April 19, 2019, 10:19 pm

Departed USPS Regional Facility

SPRINGFIELD IL DISTRIBUTION CENTER

Feedback

April 19, 2019, 8:13 pm
Arrived at USPS Regional Facility
SPRINGFIELD IL DISTRIBUTION CENTER

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*NOTE: Black and white (grayscale) images show the outside, front of letter-sized envelopes and mailpieces that are processed through USPS automated equipment.